

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| | : | Chapter 11 |
| In re: | : | |
| | : | |
| | : | Case No. 06-10072 (CSS) |
| NELLSON NUTRACEUTICAL, INC., <i>et al.</i> , | : | Jointly Administered |
| | : | |
| Debtors. | : | Re: Docket No. 482 |
| | : | |

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
(I) DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL
AND (II) STATEMENT OF ISSUE TO BE PRESENTED ON APPEAL PURSUANT TO
FED.R.BANKR.P. 8006 AND LOCAL BANKRUPTCY RULE 8006-1

The Official Committee of Unsecured Creditors (the “Committee”), the Appellant, in accordance with Fed.R.Bankr.P. 8006, makes the following designation of items to be included in the record on appeal and a statement of the issue to be presented on appeal. Pursuant to Fed.R.Bankr.P. 8006 and Local Bankruptcy Rule 8006-1, the Committee will provide to the Clerk of this Court a copy of the items designated below for inclusion in the record on appeal within thirty (30) days of the filing this designation.

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

The Committee's designation of items (including any exhibits thereto)¹ to be included in the record on appeal is as follows:

1. Debtor, Nellson Nutraceutical, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 139);
2. Debtor, Nellson Nutraceutical, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 147);
3. Debtor, Nellson Intermediate Holdings, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 4 in Bankr. Case No. 06-10074(CSS));

1 **Bolded numbers in brackets refer to the trial exhibit numbers of the Joint Exhibits of the Committee and the Office of United States Trustee to Debtors' Motion for Entry of an Order Authorizing and Approving Payments under Management Incentive Plan.**

4. Debtor, Nellson Intermediate Holdings, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 5 in Bankr. Case No. 6-10074(CSS));
5. Debtor, Nellson Holdings, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 4 in Bankr. Case No. 06-10073(CSS));
6. Debtor, Nellson Holdings, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 5 in Bankr. Case No. 06-10073(CSS));
7. Debtor, Nellson Northern Operating, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 4 in Bankr. Case No. 06-10075(CSS));
8. Debtor, Nellson Northern Operating, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 5 in Bankr. Case No. 06-10075(CSS));
9. Debtor, Nellson Nutraceutical Eastern Division, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 4 in Bankr. Case No. 06-10076(CSS));
10. Debtor, Nellson Nutraceutical Eastern Division, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 5 in Bankr. Case No. 06-10076(CSS));
11. Debtor, Nellson Nutraceutical Powder Division, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 4 in Bankr. Case No. 06-10077(CSS));
12. Debtor, Nellson Nutraceutical Powder Division, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 5 in Bankr. Case No. 06-10077(CSS));
13. Debtor, Vitex Foods, Inc.'s Schedules of Assets and Liabilities, filed February 28, 2006 (D.I. 4 in Bankr. Case No. 06-10078(CSS));
14. Debtor, Vitex Foods, Inc.'s Statement of Financial Affairs, filed February 28, 2006 (D.I. 5 in Bankr. Case No. 06-10078(CSS));
15. Motion for Entry of an Order Authorizing and Approving Payments under Management Incentive Plan, filed April 28, 2006 (D.I. 334);
16. Debtor, Nellson Nutraceutical, Inc.'s Amended Schedules of Assets and Liabilities, filed April 28, 2006 (D.I. 335);

17. Debtor, Nellson Nutraceutical, Inc.'s Amended Statement of Financial Affairs, filed April 28, 2006 (D.I. 336);
18. Debtor, Nellson Holdings, Inc.'s Amended Statement of Financial Affairs, filed May 1, 2006 (D.I. 339; D.I. 7 in Bankr. Case No. 06-10073(CSS));
19. Debtor, Nellson Intermediate Holdings, Inc.'s Amended Statement of Financial Affairs, filed May 1, 2006 (D.I. 340; D.I. 7 in Bankr. Case No. 06-10074(CSS));
20. Debtor, Nellson Northern Operating, Inc.'s Amended Statement of Financial Affairs, filed May 1, 2006 (D.I. 341; D.I. 10 in Bankr. Case No. 06-10076(CSS));
21. Debtor, Nellson Northern Operating, Inc.'s Amended Schedules of Assets and Liabilities, filed May 1, 2006 (D.I. 342; D.I. 9 in Bankr. Case No. 06-10075(CSS));
22. Debtor, Nellson Nutraceutical Eastern Division, Inc.'s Amended Statement of Financial Affairs, filed May 1, 2006 (D.I. 343; D.I. 7 in Bankr. Case No. 06-10076(CSS));
23. Debtor, Nellson Nutraceutical Powder Division, Inc.'s Amended Statement of Financial Affairs, filed May 1, 2006 (D.I. 344; D.I. 10 in Bankr. Case No. 06-10077(CSS));
24. Debtor, Nellson Nutraceutical Powder Division, Inc.'s Amended Schedules of Assets and Liabilities, filed May 1, 2006 (D.I. 345, D.I. 9 in Bankr. Case No. 06-10077(CSS));
25. Debtor, Vitex Foods, Inc.'s Amended Statement of Financial Affairs, filed May 1, 2006 (D.I. 346, D.I. 7 in Bankr. Case No. 06-10078(CSS));
26. Objection of the Official Committee of Unsecured Creditors to Motion for Entry of an Order Authorizing and Approving Payments under Management Incentive Plan, filed May 30, 2006 (D.I. 390);
27. United States Trustee's Objection to Motion for Entry of an Order Authorizing and Approving Payments under Management Incentive Plan, filed May 30, 2006 (D.I. 392);
28. Notice of Agenda of Matters Scheduled for Hearing on June 6, 2006 at 3:00 p.m., filed June 2, 2006 (D.I. 404);
29. Notice of Amended Agenda of Matters Scheduled for Hearing on June 6,

2006 at 3:00 p.m., filed June 2, 2006 (D.I. 411);

30. Reply Memorandum in Support of Motion for Entry of an Order authorizing and Approving Payments under management Incentive Plan, filed June 16, 2006 (D.I. 428);
31. Notice of Agenda of Matters Scheduled for Hearing on June 28, 2006 at 10:30 a.m., filed June 26, 2006 (D.I. 446);
32. Amended Notice of Agenda of Matters Scheduled for Hearing on June 28, 2006 at 10:30 a.m., filed June 26, 2006 (D.I. 449);
33. Notice of Service of Debtors' Exhibits to Motion of the Debtors for Entry of an Order Authorizing and Approving Payments under Management Incentive Plan, filed July 6, 2006 (D.I. 457);
34. Notice of Agenda of Matters Scheduled for Hearing on July 10, 2006 at 1:30 p.m., filed July 6, 2006 (D.I. 458);
35. Notice of Service of Joint Exhibits of the Official Committee of Unsecured Creditors and the Office of United States Trustee to Debtors' Motion for Entry of an Order Authorizing and Approving Payments under Management Incentive Plan, filed July 6, 2006 (D.I. 459);
36. Certification of Counsel in Support of Order Authorizing and Approving Payments Under Management Incentive Plan, filed July 17, 2006 (D.I. 480);
37. Order Authorizing and Approving Payments under Management Incentive Plan, entered July 18, 2006 (D.I. 482);
38. Transcript of Hearing held on July 10, 2006 before the Honorable Christopher S. Sontchi, filed July 21, 2006 (D.I. 495);
39. Transcript of Hearing held on July 13, 2006 before the Christopher S. Sontchi **[TBD]**;
40. Total Cash Compensation Analysis Prepared by FTI (Assumed Revenue of 300 Million) **[Joint Trial Exhibit 1]**;
41. Total Cash Compensation Analysis Prepared by FTI (Assumed Revenue of 300 Million) **[Joint Trial Exhibit 2]**;
42. Executive Compensation Assessor Individual Position Profiles (Summaries) **[Joint Trial Exhibit 4]**;

43. Executive Compensation Assessor Individual Position Profiles (Full Documents) **[Joint Trial Exhibit 5]**;
44. Debtors' 2005 Bonus Program dated April 2005 **[Joint Trial Exhibit 6]**;
45. Debtors' Undisclosed 2006 Bonus dated April 2006 **[Joint Trial Exhibit 9]**;
46. Management Incentive Plan dated April 2006 **[Joint Trial Exhibit 20]**;
47. Key Employee Employment Plan dated December 2005 **[Joint Trial Exhibit 21]**;
48. ERI Executive Compensation Assessor & Survey Methodology **[Joint Trial Exhibit 32]**;
49. Debtors' Board Meeting Minutes: November 11, 2005, December 19, 2005, December 21, 2005, March 16, 2006, April 21, 2006 and May 20, 2006 **[Joint Trial Exhibit 33; (partial) Bates Nos. 324-326, 329]**;
50. June 15, 2006 Letter and Discovery Documents from Debtors' Counsel and Accompanying Nellson E-mails **[Joint Trial Ex. 36; (partial) Bates Nos. 393-394]**;
51. Exhibit A to Key Employee Retention Plan **[Joint Trial Exhibit 38]**;
52. United States Trustee's Notice of Appeal from Order Authorizing and Approving Payments under Management Incentive Plan, filed July 27, 2006 (D.I. 517);
53. Official Committee of Unsecured Creditors' Notice of Appeal from Order Authorizing and Approving Payments under Management Incentive Plan, filed July 28, 2006 (D.I. 518);
54. Copy of the docket entries in the above-captioned case

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

The Committee's statement of the issue to be presented on appeal is as follows:

Whether the United States Bankruptcy Court for the District of Delaware erred in *not* concluding that the management incentive plan was (i) a poorly-disguised "key employee retention program" contrary to the applicable provisions of the Bankruptcy Code and (ii) unnecessary and unreasonable in light of the compensation already paid to the Debtors' executives.

Dated: August 7, 2006
Wilmington, Delaware

Respectfully submitted,

REED SMITH LLP

By: /s/ Kurt F. Gwynne

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